

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1812 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

DIVISIONAL CONTROLLER

Versus

MAHIPATSINH N JADEJA

Appearance:

MR YS LAKHANI for Petitioner

MR HK RATHOD for Respondent- workman.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/03/97

ORAL JUDGEMENT

Rule.Mr.H.K.Rathod waives the service of the rule. On the request of both the sides the matter is taken up for final hearing right now.

The respondent workman was working as Conductor. An inquiry was held against the respondent-workman on the allegation that on checking of the bus five passengers

were having tickets which had already been issued earlier and the passengers of one group raised a grievance that the respondent-workman had collected Rs.40/- from them and given tickets which had already been issued in past. According to way bill the said tickets were issued at the 9th stage from Halvad. The respondent-workman was chargesheeted and in the inquiry he was found guilty of the misconduct of misappropriation of Rs.40/- and therefore he was fined Rs.50/- by the concerned authorities. The respondent-workman preferred review and the dismissal order was passed against him on 12.3.1994 dismissing him from service on 13.5.1994. On an industrial dispute being raised by the respondent-workman reference has now been adjudicated and the Labour Court, Rajkot has passed the impugned award granting relief of reinstatement with continuity of service and 30% of the backwages. This award dated 21.10.1994 is under challenge before this Court at the instance of Gujarat State Road Transport Corporation.

I have gone through the award and have heard learned counsel. Looking to the fact that the charge was found to be proved against the petitioner but the Labour Court has considered it to be a fit case for granting relief of reinstatement, in the facts and circumstances of the case, I do not find any basis to interfere with the relief of reinstatement with continuity of service granted to the respondent - workman but so far as grant of 30% of the backwages is concerned, I find that the same has been granted without adjudicating the claim of backwages and the relief of 30% backwages has been granted without application of mind and without taking into consideration the relevant aspect for grant of backwages. I do not find the relief of 30% backwages to be in order and in the facts and circumstances of the case only relief to which the respondent-workman is found to be entitled is reinstatement with continuity of service without any backwages. Hence the impugned award passed by the Labour Court, Rajkot on 21.10.1994 is modified to the extent that respondent workman shall not be entitled to any backwages and he will be entitled to reinstatement with continuity of service only. Mr.Lakhani has very candidly stated that appropriate orders with regard to the reinstatement and continuity of service in favour of the respondent workman in terms of the award shall be passed and the respondent-workman shall be reinstated from due date within a period of four weeks from today in case he has not already been reinstated upto now.

Accordingly this Special Civil Application is

allowed in part and the Rule is made absolute in the
terms as aforesaid. No order as to costs.
